RECENT CASES.

ADMINISTRATORS—MISCONDUCT—COMMISSIONS.—IN RE GALL, 95 N. Y. SUPP. 124.—Where an administratrix has been guilty of misconduct, *held*, that on the settlement of her account, the surrogate may, in his discretion, deny her statutory commissions.

Such is the general rule. *Hall v. Wilson*, 14 Ala. 295; *State ex rel. Wolff v. Berning*, 74 Mo. 87. Though the contrary has been held. *In re Fitzgerald*, 57 Wis. 508. But the misconduct must consist of fraud, gross negligence, or wilful default causing loss to the estate. *Smith v. Kennard's Ex'r*, 38 Ala. 695; *St. Paul Trust Co. v. Kittson*, 62 Minn. 408. And unwise administration unaccompanied by fraud and bad faith, where long delay in accounting was without excuse, has been held sufficient. *In re Atherton's Estate*, 8 Knep. 150. But, on the other hand, that unfaithful administration on the part of an executor will not deprive him of compensation for his services so far as they have been beneficial to the estate. See *Jennison v Hapgood*, 10 Pick. 77.

ADVERSE POSSESSION—COLOR OF TITLE—TAX DEEDS.—BRANNAN V. HENRY, 39 So. 92 (ALA.).—*Held*, that a tax deed, though void as a muniment of title, is admissible to show color of title to support adverse possession if it sufficiently describes the land.

The tendency has been to support this proposition. Some federal decisions have rejected it in the past, but the most recent cases support it where the deed is not void on its face. *Truce v. Am. Ass.*, 122 Fed. 598, 58 C. C. A. 266; *Bartlett v. Ambrose*, 42 U. S. App. 381. The older cases followed it rather on the ground of the accuracy of the description of the land. *Harrison v. Spencer*, 90 Mich. 586; *Rensens v. Lawson*, 91 Va. 226; *Edgerton v. Bird*, 6 Wis. 527. And some even where the property was inaccurately described. *Smith v. Shattock*, 12 Ore. 362; *Childs v. Shower*, 18 Iowa 261. *Contra*, *Berendo v. Kaiser*, 66 Tex. 352. Color of title can be claimed only for as much as is described. *Stevens v. Johnson*, 55 N. H. 405. In the following cases claims of color of title under invalid tax deeds were not allowed. *Moore v. Brown*, 11 How. 424; *Matterson v. Devoe*, 18 Kan. 223; *Brougher v. Stone*, 72 Miss. 647.

ATTORNEY AND CLIENT—SIGNATURE OF ATTORNEY ON BOND.—HAYES V. BRONSON, 61 ATL. 549 (CONN.).—An attorney, while acting for a firm as plaintiffs in a replevin suit, signed the replevin bond "John Doe, Attorney for Plaintiff."—*Held*, that he bound himself personally and not his clients.

A principal cannot be charged on a bill drawn by "A. B., agent." *Pentz v. Stanton*, 10 Wend. 271. A Court of Equity will look beyond the form of execution, and, having ascertained the intention of the signer, will, if possible, give the effect intended. *Stark v. Stark*, 94 U. S. 477. An unsealed instrument signed in the name of the agent binds the principal if that intent appears on its face and the agent has authority. *McDonald v. Bear River Co.*, 13 Cal. 220. Even if the agent sign as such and use his own seal he may not be

personally bound. *Delbers v. Del. & H. C. Co.*, 4 Wend. 285. But an agent is not personally liable on a note made by him to one who took it with knowledge of intention to act as agent. *Bradley v. McKee*, 5 Cranch C. C. 298. Nor will he be personally bound if contrary intention appears on the face of the instrument. *Haskins v. Edwards*, 1 Iowa, 246. But the attorney has a remedy over against the principal, if he has acted in good faith. *Clark v. Randall*, 9 Wis. 135.

CONTRACTS—EXCLUSIVE CONTRACT FOR PERSONAL SERVICES—INJUNCTION.—TAYLOR IRON & STEEL CO. V. NICHOLS ET AL., 61 ATL. 946 (N. J. EQ.).—*Held*, that where a contract contains an agreement that one shall devote his entire time to the service of another it does not imply a covenant not to serve a third party during the period covered by the contract.

Even if employees quit under circumstances showing bad faith equity will not force them to remain in service against their will. *Arthur v. Oakes*, 63 Fed. 310. Employees cannot, while in service, perform some duties and refuse to perform other necessary duties. *So. Cal. Ry. v. Rutherford*, 62 Fed. 796. The mere fact of an employee's knowledge of the business will not justify an injunction against violation of his contract. *Rogers Mfg. Co. v. Rogers*, 58 Conn. 356. To justify the injunction there must be an express covenant *not* to enter the employ of another and also proof of special skill or expertness. *Burney v. Ryle*, 91 Ga. 701. Under an exclusive contract for services when the pecuniary injury would be incapable of proof an injunction would be granted even in the absence of the negative clause. *Col. Club v. Reilly*, 11 Ohio Dec. 272. But even under such circumstances the injury must be irreparable. *Sternberg v. O'Brien*, 48 N. J. Eq. 370. And not remediable at law. *Hair Co. v. Huckins*, 56 Fed. 366. Where performance for another would violate contract negative clause would be implied. *Duff v. Russell*, 133 N. Y. 678. In *Hamblin v. Dunneford*, 2 Edw. Ch. 529, an injunction was refused, although there was an express covenant not to perform and the breach was acknowledged.

CONTRACTS—PUBLIC POLICY—LABOR UNIONS.—JACOBS V. COHEN, 34 N. Y. LAW JOUR. 58.—*Held*, that a tripartite agreement, made by an employer with a labor union and with his employees, who were members of the union, in which he contracted not to engage any person, who was not a member of the union and in good standing, and to discharge any person who should fail to keep up his standing in the union, is not an agreement in violation of any public policy.

Both opinions in this case spend much time in comparing it with *Curran v. Gallen*, 152 N. Y. 33. That case is, however, easily distinguishable. In *Curran v. Gallen*, *supra*, the purpose of the agreement was to coerce those who were not parties to it. In this case the employers were parties to the contract. This distinction is made clear in *Stevedore's Ass'n v. Walsh*, 2 Daly (N. Y.) 1. But see *dicta* in *People v. Fisher*, 14 Wend. 9. This distinction is by no means uncommon. *Case of the Journeymen Cordwainers of the City of New York*, 1810; (*People v. Treguler*,) 1 Wheelers Crim. Cases, 142; *Com. v. Hunt*, 4 Metc. 111. It is recognized by statute in England, 5 Geo. IV., c. 95, secs. II and III. Agreements between employees or between employers for their common benefit are valid, provided no unlawful means are used to carry out their ends. *Collins v. Locke*, 4 App. Cas. 674; *Slate v. Stewart*, 59 Vt. 273; *Snow v. Wheeler*, 113 Mass. 179. It has been held,